

THOMAS H. CONNELLY
VIMCO EXPLORATION, INC.

IBLA 81-119

81-121

81-122

Decided January 27, 1981

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting various oil and gas lease offers. M 45973, etc.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest

When an offer to lease is filed by a person asserting he is the sole party in interest in the offer, and an interest in the offer is created later in another person, it is not proper to reject the offer on the ground that the showings required by 43 CFR 3102.7 were not filed within 15 days after the offer was first filed.

APPEARANCES: Maurice T. Reidy, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Thomas H. Connelly and Vimco Exploration, Inc., have appealed three decisions of the Montana State Office, Bureau of Land Management (BLM), rejecting various oil and gas lease offers. 1/ Each decision

1/ The following cases reviewed herein have been consolidated at the request of the appellants:

<u>Docket No.</u>	<u>Offeror</u>	<u>Lease Offers Rejected</u>
IBLA 81-119	Thomas H. Connelly	M-45973 through M-45986, M-45988

IBLA 81-121	Thomas H. Connelly	M-46071, M-46072
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IBLA 81-122	Vimco Exploration, Inc. *	M-45862
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*Thomas H. Connelly is the president of the corporation.

stated that the Certification of Qualifications received from the appellant "revealed there was an undisclosed party in interest at the time the lease offers were filed. Regulation 43 CFR 3102.2-7 [2/] states that the applicant shall set forth on the lease offer the names of all other parties who hold any interest in the offer. The offers stated there were no other parties in interest."

On various dates, appellants filed the over-the-counter noncompetitive lease offers at issue indicating on the lease form that each was the sole party in interest in each of their respective offers.

Following receipt of the offers BLM notified appellants that they would have to certify to their qualifications to hold a Federal oil and gas lease by answering various questions. 3/ The certification form indicated that if the answer to any question was "yes" appellants should attach an explanation.

The first question asked whether any party other than those listed on the lease offer owned or held any interest in the offer at the time the offer was filed with BLM. For each offer appellants responded "yes" and attached a statement in which it was explained that, at the time of filing, appellant Thomas H. Connelly, for himself and as president of Vimco Exploration, Inc., had used his own check and money to pay filing fees and rentals and had intended to offer to Robert W. David an interest in lease offers but that he had made no written or oral agreement to that effect. Appellants indicated that subsequently they did enter into agreements with Robert W. David to share in the lease.

Following receipt of the adverse BLM decisions, appellants requested that BLM reconsider the decisions pointing out that either appellant Connelly or Vimco Exploration, Inc., was in fact the sole party in interest in each offer at the time of filing. When no response

2/ At the time appellants filed the lease offers the governing regulation was 43 CFR 3102.7 (1979). Prior to the decisions addressed in these appeals that regulation was revised (see 45 FR 35156 (May 23, 1980)) and now appears at 43 CFR 3102.2-7.

3/ At the time, BLM was investigating instances of alleged fraud in the noncompetitive oil and gas leasing system involving violations of the prohibition against multiple filings for the same parcel in simultaneous drawings, violations of acreage limitations, and violations of the requirements that all parties with an interest in an offer or lease be disclosed at the time the offer is filed.

had been received shortly before the end of the period for appealing the adverse decisions, appellants submitted notices of appeal. BLM then denied the request for reconsideration stating that it had lost jurisdiction over the cases when the appeal notices were filed.

In their statements of reasons, appellants indicate that appellant Connelly had discussed how to complete the qualifications certifications in this case with one John Deans, a member of a special BLM investigative task force reviewing the oil and gas leasing program. They explain that although there was only one interested party when the offers were filed, that was not the case at the time of the certification, so they felt that further explanation was required and the certification form made no provision for answering "no" and providing an explanation. Appellants report that the manner in which they filled out the form had been recommended by Deans to facilitate further processing of the lease offers. Appellants urge that 43 CFR 3102.7 was complied with for all offers because at the time of filing there was only one party in interest in each offer and such was indicated on the lease offer form.

[1] Although the regulations require that any other party in interest in an oil and gas lease offer when first filed must submit the information required by 43 CFR 3102.7 not later than 15 days after the filing of the offer, there is no regulation which prohibits the creation of an interest in the offer after it has been filed. Albert W. Taylor, 49 IBLA 103 (1980); see 43 CFR 3100.0-5(b). 4/ It appears that even though appellants responded affirmatively to the question of whether there were any other parties in interest in the offer at the time of filing, either Thomas H. Connelly or Vimco Exploration, Inc., was in fact, the sole party in interest until sometime after the lease offers were filed. Therefore, there has been no violation of 43 CFR 3102.7 and BLM improperly rejected appellants' lease offers.

4/ Regulations adopted on May 23, 1980, now provide that no interest in an offer may be assigned prior to lease issuance or 60 days from the applicant's receipt of priority, whichever is first. 43 CFR 3112.4-1 (45 FR 35165 (May 23, 1980)). This regulation would not be applicable to appellant since his filing predated the adoption of the regulation. In any event, the penalty for a violation is disapproval of the assignment, not rejection of the offer.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and remanded for issuance of the leases.

Douglas E. Henriques

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

